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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5901 OF 2006

Bodharaj Maruti Lungase & ors. Petitioners
versus
Mrs.Chimabai & others Respondents

Mr.Surel S. Shah for petitioners.
Mr.Nitin Jamdar for respondent no.1.

CORAM : A.S.OKA, J.

DATE : 09th March 2007

PC :

1. The submissions of the advocates for the parties are heard. The petitioners are the appellants in an appeal filed before the District Court at Solapur. An application was made at Exhibit 26 by the petitioners for seeking adjournment on the ground that Vakalatnama of the earlier advocate appointed by the petitioners has been cancelled and they were desirous of engaging another advocate. By the order impugned dated 9th June 2006, the said application was rejected. It is not in dispute between the petitioners and first respondent that on the same day by a separate order the appeal has been dismissed for

default.

2. Learned advocate for the petitioners stated that the petitioners are ready and willing to give an undertaking to this Court that they will not seek any adjournment before the District Court if the appeal is restored and they will proceed with the hearing on the date fixed by this Court. Undertakings of the petitioner nos.1 and 2 are taken on record and marked as "X" and "Y" respectively for identification. The learned Advocate states that other petitioners are ready and willing to file similar undertakings before the District Court within the time fixed by this Court. He, therefore, submitted that one chance may be given to the petitioners to prosecute the appeal. The learned counsel for the first respondent-original plaintiff pointed out that by order dated 29th March 2005 passed by this Court in earlier writ petition filed by the petitioners, a time bound schedule was fixed for disposal of the appeal. He submitted that as the petitioners repeatedly sought for adjournments, the learned Appellate Court was justified in passing the orders impugned.

3. I have considered the submissions. The

petitioners have agreed not to seek further adjournment and to proceed with the hearing of the appeal. First two petitioners have already given undertakings and other two have agreed to give undertakings. The appeal preferred by the petitioners is for challenging a decree passed in a suit for partition. Considering these aspects, in my view, one opportunity deserves to be granted to the petitioners as they have offered to go on with the hearing of the appeal. Prejudice which may be caused to the first respondent can be compensated by costs. Amount of costs is quantified at Rs.5,000/-. Hence, I pass the following order.

4. ORDER :-

a) The impugned order dated 9th June 2006 is quashed and set aside;

b) Civil Appeal No.102 of 2005 is restored to file subject to the condition that third and fourth petitioners will file an undertaking in writing before the Appellate Court stating therein that they will not seek any adjournment on any ground and they will proceed with the hearing of the appeal and subject to petitioners

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paying to the first respondent or depositing with the Appellate Court a sum of Rs.5,000/- (Rs.Five thousand only) by way of costs on or before 7th April 2007;

c) If compliances as above are made by the petitioners, the parties to appear before the Appellate Court on 10th April 2007 at 11.00 a.m.. The learned Judge of the Appellate Court may take up the hearing of the appeal on the same day or place it on any other day which is convenient to him. Under no circumstances adjournment will be granted to the petitioners;

d) The appeal shall be disposed of as expeditiously as possible and preferably by the end of July 2007;

e) All contentions of parties are kept open.

(A.S.OKA, J.)